

UNITED STATES DISTRICT COURT
OR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
555 4th St., N.W., Room 8104)	
Washington, D.C. 20001)	
Plaintiff,)	
)	
v.)	
)	Civil Action No.
MCI COMMUNICATIONS)	
CORPORATION)	
1801 Pennsylvania Ave., N.W.)	
Washington, D.C. 20006, and)	
)	Filed:
BT FORTY-EIGHT COMPANY)	
("NewCo"))	
Two Paces West, Suite 1500)	
2727 Paces Ferry Road, N.W.)	
Atlanta, Georgia 30339)	
Defendants.)	
)	

COMPLAINT FOR JUDGMENT AND INJUNCTIVE RELIEF (ANTITRUST)

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the above-named defendants, and complains and alleges as follows:

1. MCI has agreed with British Telecommunications plc ("BT") to create NewCo, a joint venture that will offer international enhanced telecommunications services. BT will also purchase 20% of MCI's stock and will have the right to appoint three of MCI's fifteen directors. BT is the dominant telephone company in the United Kingdom, as it is the provider of almost all local telephone service and has high market shares in domestic long distance and international service.

Vertical affiliation between a US international long distance provider and a foreign carrier with a local bottleneck and market power in its home market is likely to reduce competition in the United States, by creating incentives for the foreign carrier to favor its US affiliate over other providers in access to its local, domestic long distance and international telecommunications services and to its network. Thus, the agreement between MCI and BT may substantially reduce competition in international telecommunications services and enhanced telecommunications services markets because BT will have the incentive and ability to discriminate in favor of the joint venture and MCI and to take other steps that could lessen competition. The result is likely to be higher prices and lower quality service for US consumers.

I. JURISDICTION AND VENUE

1. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by the Defendants described in this Complaint of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

2. MCI is a Delaware corporation with its corporate headquarters and principal place of business in the District of Columbia, and is subject to the jurisdiction of this Court under Section 12 of the Clayton Act, 15 U.S.C. § 22. BT Forty-Eight Company ("NewCo"), a United Kingdom corporation, transacts business

in the US, either directly or through its wholly owned subsidiaries. This Court is authorized, pursuant to 15 U.S.C. § 25, to bring NewCo within its jurisdiction.

3. Venue is properly based in the District of Columbia under 15 U.S.C. § 22 and 28 U.S.C § 1391(b) and (c).

II. DEFINITIONS

4. "Correspondent system" means the system by which an international telecommunications or enhanced telecommunications provider in one country, and an international telecommunications or enhanced telecommunications services provider in another country, agree to complete traffic for each other. For delivery of international switched traffic, the provider with the greater volume of traffic compensates the other provider by payment of net settlements based on "accounting rates" they charge each other for delivery of a minute of traffic.

5. "Enhanced telecommunications service" means any telecommunications service that includes as an integral part features in addition to transmission, switching, and other conveyance of information.

6. "Investment Agreement" means the agreement between BT and MCI dated August 4, 1993, and amended on January 31, 1994, in which BT agreed to acquire 20% of the outstanding shares of MCI for \$4.3 billion. After this agreement is consummated, BT will be the largest shareholder of MCI and will have the right to appoint three of MCI's fifteen directors as well as other special rights, and MCI will also have special rights in BT. BT will lose its special rights if it enters almost

any telecommunications or enhanced telecommunications service or equipment business in the Americas.

7. "Joint Venture Agreement" means the agreement between BT and MCI dated August 4, 1993 in which BT and MCI agreed to create and operate NewCo as a joint venture of which BT will own 75.1% and MCI will own 24.9%.

8. "Long distance telecommunications services" means telecommunications and enhanced telecommunications services between cities or localities, including both international and domestic services.

9. "Private line" means telecommunications and enhanced telecommunications conveyed over circuits dedicated to a particular customer.

10. "Seamless global telecommunications services" means international telecommunications and enhanced telecommunications services available from one provider that retain the same quality, features, characteristics, and capabilities throughout the world. Seamless global telecommunications services can include enhanced virtual private networks and data networks.

11. "Switched" means telecommunications and enhanced telecommunications services that make use of switching facilities and common lines to convey traffic.

12. "Telecommunications service" means the conveyance, by electrical, magnetic, electromagnetic, electromechanical or electrochemical means (including fiber-optics), of information consisting of any of the following: (1) speech, music and other sounds; (2) visual images; (3) data or other information not in the form of sounds or visual images; (4) actuation and control signals; or (5) translation or

conversion that does not alter the form or content of information. "Convey" and "conveyance" include transmission, switching, and receiving. Telecommunications service includes all facilities used in providing such conveyance, and the installation, maintenance, repair, adjustment, replacement and removal of any such facilities.

13. "UK local telecommunications services" means telecommunications services provided within a city or locality in the United Kingdom, and the origination and termination of domestic long distance and international telecommunications and enhanced telecommunications within a city or locality in the United Kingdom.

14. "United Kingdom" and "UK" mean England, Wales, Scotland, Northern Ireland and all the other geographically proximate territories, dependencies, or possessions of the United Kingdom (excluding the Isle of Man).

15. "United States" and "US" mean the fifty states, the District of Columbia, and all territories, dependencies or possessions of the United States.

16. "US-UK international telecommunications services" means telecommunications services and enhanced telecommunications services between the United States and the United Kingdom including correspondent services such as International Direct Dial ("IDD"), International Message Telephone Service ("IMTS"), and International Private Line Service ("IPLS").

III. THE DEFENDANTS AND OTHER RELEVANT ENTITIES

17. MCI Communications Corporation ("MCI") is the second largest domestic long distance and international telecommunications company in the US and the fifth largest telecommunications provider in the world, with 1993 revenues of \$12 billion. It carries about 20% of the international traffic that originates in the US. MCI provides long distance telecommunications and enhanced telecommunications services in the US and international telecommunications and enhanced telecommunications services between the US and other nations, including the UK.

18. NewCo is a wholly owned subsidiary of BT and will become a joint venture owned by BT and MCI under the Joint Venture Agreement. NewCo will provide seamless global telecommunications services, including enhanced telecommunications services, and may also provide other telecommunications services. These services will be distributed exclusively by BT and MCI in separate geographic areas, and MCI and BT will not compete with NewCo. NewCo includes any subsidiaries or affiliates of NewCo, any name under which it may subsequently do business, and any predecessor (whether jointly owned by MCI and BT, or separately owned by either of them), successor or assign of such joint venture or entity owned by MCI or BT and having among its purposes substantially the same purposes as described for NewCo in the Joint Venture Agreement.

19. British Telecommunications plc ("BT") is a UK corporation with its principal offices in London, England. It is the fourth largest provider of telecommunications services in the world. BT's revenues for its 1992-93 fiscal year

were over £13 billion (approximately \$20 billion, at current exchange rates). BT provides local, long distance, and enhanced telecommunications services in the UK, and international and enhanced telecommunications services between the UK and other countries, including the US. BT offers some seamless global telecommunications services through its wholly owned US subsidiary, Syncordia. Syncordia will become part of the NewCo joint venture when the Investment Agreement and Joint Venture Agreement are consummated.

IV. TRADE AND COMMERCE

20. The activities of the defendants in the provision of US-UK international telecommunications services and of seamless global telecommunications services are within the flow of, and substantially affect, foreign and interstate commerce.

21. Three companies provide almost all US-UK international telecommunications services in the US. MCI is the second largest US provider, AT&T Corporation is the largest, and Sprint Corporation is the third largest.

22. US-UK international telecommunications services are used by individuals and companies in the US to exchange voice, data and video messages with individuals and companies in the UK. No close substitute exists for telecommunications and enhanced telecommunications services between the US and the UK, and such services constitute a distinct market or markets for purposes of the antitrust laws.

23. Seamless global telecommunications services will be used by multinational corporations and other large users in the US to exchange voice, data and video messages with corporate offices, vendors and other operations in the UK, as well as in other countries. Existing services, provided through the correspondent system, often lack standardization of advanced features between countries, and the parts of circuits comprising international private lines must ordinarily be obtained from a different company in every country. Seamless global telecommunications services, on the other hand, will be available from a single source. Moreover, a substantial number of customers in the US and the UK are likely to demand these services. Almost half of the potential customers of seamless global telecommunications services are based in the US, and many others are headquartered in the UK; in addition, most other potential customers want to include locations in the US and the UK in their networks. Thus, to ensure a competitive market for these services, providers must have nondiscriminatory access to the US and the UK. Seamless global telecommunications services, as they emerge, will constitute a distinct market or markets for purposes of the antitrust laws.

24. UK local telecommunications services are necessary for US-UK international telecommunications services that originate or terminate in the UK. BT has an effective bottleneck monopoly conferring substantial market power in the provision of UK local telecommunications services. About 97% of all telecommunications traffic in the UK terminates over BT's local network, and most traffic also originates over BT's local network. Although cable television companies

also provide UK local telecommunications services in some areas, the cable companies account for an insignificant proportion of such services, and competition by them will not diminish BT's local market power in the UK for the foreseeable future. Substantial replication of BT's UK local telecommunications network would be prohibitively expensive for any new entrant or existing long distance provider. Accordingly, any provider of telecommunications or enhanced telecommunications services, or seamless global telecommunications services, whether in the US, the UK, or elsewhere, is dependant on BT for origination and termination of telecommunications between the UK and anywhere else.

25. BT is also the dominant provider of domestic long distance telecommunications services in the UK, carrying about 84% of switched long distance traffic in the UK, and it has market power in that market. Only one other company, Mercury Communications, Ltd. ("Mercury"), currently provides any substantial share of domestic long distance telecommunications services in the UK using its own telecommunications facilities, but its market share is much smaller than that of BT. While the UK government has granted licenses to other firms to establish domestic long distance telecommunications facilities, those firms either have not actually begun to operate competing networks or have not achieved any significant market share. Moreover, none of those firms are likely to obtain a significant position for some time. There are several reasons why BT has, and likely will retain, market power in UK domestic long distance telecommunications for at least the next several years. First, unlike long distance carriers in the US, BT is not required to give Mercury or other competitors "equal access" to BT's

network (equal access means that customers can make long distance calls through Mercury without dialing special access numbers or using special equipment). Second, also in contrast to the US, Mercury customers do not have "number portability" (number portability enables customers to change long distance providers without getting a new telephone number). Third, long distance carriers must use BT's local network to gain access to their customers. Fourth, Mercury is required to pay to BT substantial charges in excess of the cost of providing interconnection to BT's network. These charges are known as "access deficit charges," or "ADCs". Other new competitors who enter the domestic UK market may also be subject to ADCs.

26. BT also has market power in the provision of international long distance telecommunications services in the UK, carrying about 75% of all switched international telecommunications traffic that originates or terminates in the UK. All other traffic is currently carried by Mercury. In addition to the factors that give BT market power in domestic long distance services, all of which apply to international service as well, BT's market power in international telecommunications service is unlikely to decline because Mercury is the only other company licensed to operate a UK network for the provision of international telecommunications services. Other carriers, therefore, must use BT's or Mercury's international long distance networks on a resale basis to provide international service from the UK.

27. BT has the ability substantially to lessen competition in the markets for US-UK international telecommunications services and for seamless global

telecommunications services because its, MCI's, and NewCo's competitors in those markets must have access to the BT network to provide competitive services. If BT were to discriminate against its, MCI's, or NewCo's competitors, competition would be substantially lessened. After consummation of the Joint Venture Agreement and the Investment Agreement, including the restrictions on BT's ability to compete with MCI and NewCo, BT will be vertically integrated with MCI and NewCo and will have the ability and a greater incentive to discriminate against its, MCI's, and NewCo's competitors.

28. This vertical integration could also lead to a substantial lessening of competition in other ways. Currently, most international telecommunications traffic uses the correspondent system. Because US carriers send more traffic to the UK than they receive, they must make settlement payments to UK carriers, including BT, for delivery of their switched traffic. BT, once it is affiliated with MCI, will have the incentive to direct its traffic from the UK to MCI, thereby increasing MCI's competitors' settlement liability to BT. Also, BT obtains confidential information from correspondent carriers and other providers that interconnect with its UK network, such as plans to introduce or change services, projected traffic flows, and identities of private line customers. After the transactions are consummated, BT will have the means and the incentive to provide MCI or NewCo with this confidential information that it obtains from their competitors.

V. VIOLATIONS ALLEGED

29. The Investment Agreement and Joint Venture agreement may substantially lessen competition in foreign commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) BT will have an increased incentive, and the ability, to use its market power in the provision of local and domestic and international long distance telecommunications services in the UK to discriminate in favor of MCI and NewCo against other US international telecommunications and enhanced telecommunications providers. BT discrimination in favor of MCI and NewCo will substantially lessen competition in the markets for US-UK international telecommunications services and seamless global telecommunications services;

(b) BT will have an increased incentive, and the ability, to provide to MCI and NewCo confidential, competitively sensitive information obtained from MCI's and NewCo's US competitors through their correspondent relationships or their interconnection with BT, substantially lessening competition in the US; and

(c) BT will have an increased incentive, and ability, to favor MCI over its competitors in the allocation of international telecommunications traffic from the UK, substantially lessening competition in the US.

VI. PRAYER

WHEREFORE, plaintiff prays:

1. That the sale by defendant MCI of 20% of its shares to BT under the terms of the Investment Agreement be adjudged a violation of Section 7 of the Clayton Act.
2. That defendant MCI's participation in and ownership of a portion of NewCo be adjudged a violation of Section 7 of the Clayton Act.
3. That an injunction be issued against the sale by defendant MCI of 20% of its shares to BT and against defendant MCI's participation in and ownership of a portion of NewCo and that plaintiff be granted such other relief as this case may require and as this Court may deem just and proper.
4. That in the event that any defendants are not found or transacting business within this judicial district, that this Court issue summons to such defendants to bring them within the jurisdiction of this Court pursuant to 15 U.S.C. § 25.

5. That the plaintiff recover the costs of this action.

Dated: _____, 1994

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